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ABSTRACT

As part of an examination of whether newspaper chains help member papers with legal problems, this paper reviews a series of courtroom and court-record access cases involving the largest newspaper chain in the United States, the Gannett Company. The paper attempts to determine the extent to which Gannett has financially and legally helped its member papers bring law suits involving freedom of the press issues, whether the cases discussed represent a Gannett policy concerning the seeking of access to courtrooms and court records, what the nature and purpose of that policy are, its consequences for the development of mass media law, and the potential benefits to Gannett. (FL)

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The Right to Gather News: The Gannett Connection

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

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As more and more newspapers in the United States fall under the control of fewer and fewer individuals and corporations, newspaper chains have come under close scrutiny. In this paper we will examine the relationship between the Gannett newspaper chain and mass media law.

Supporters of newspaper chains often point out that one of the major advantages of being a chain-owned newspaper is that the individual paper can draw on the resources of the chain. Most often, these resources consist of the ability of the chain to purchase newsprint and other materials in volume at considerable savings. Chains also provide member papers with the capital to purchase labor-saving, computerized technology. Chains also purchase for use by their papers syndicated columns and other feature material; some chains provide their own wire services for member papers. But one of the major resources a chain provides is specialists who can help member papers solve production, advertising, circulation, management and editorial problems.

The question this paper addresses is: Do newspaper chains also help member papers with legal problems? And, if so, how? Specifically, the paper examines a series of courtroom and court-record access cases involving the largest newspaper chain in the United States, Gannett Co, Inc. Since 1976, Gannett and its subsidiaries have been involved in at least nine courtroom and court-record access cases that have been pursued to appellate level courts. This paper attempts to determine to what extent, if any,

Gannett helps--financially and legally--its papers bring law suits involving freedom of the press issues. The paper also attempts to answer the following questions: Does the collection of cases discussed in this paper represent a Gannett policy to seek access to courtrooms and court records? If so, what is the nature of the policy? What is its purpose? What are its consequences for the development of mass media law? And what are its potential benefits to Gannett?

With the exception of Knight-Ridder newspapers, Gannett newspapers have been the plaintiffs in more reported courtroom and court-record access cases than any other media group, individual medium or journalistic organization since the U.S. Supreme Court's 1976 decision in Nebraska Press Association v. Stuart.[1] Gannett newspapers were also the plaintiffs in the largest number of reported statutory access cases brought under state open-meeting and open-record statutes between July 1976 and March 1979.[2]

The initial question that stimulated the research was why or how a Gannett newspaper publisher would undertake potentially expensive litigation if his or her primary obligation to the parent corporation is to maximize profits. The question was provoked by one author's findings in a study of the impact of chain ownership on the nature of news[3] and the other's observation that Gannett newspapers seemed to be involved in a number of similar cases, the most significant being Gannett v. DePasquale, which was awaiting decision by the U.S. Supreme Court when the research began. Gannett v. DePasquale is the first substantial media law case bearing the name of the largest newspaper chain--in number of papers owned--in the United States to reach the Supreme Court. At this writing, Gannett owns

80 newspapers in 30 states and other media businesses.[4] Another reason for focusing on Gannett cases is that Gannett newspapers have voluntarily initiated the legal actions as distinguished from most other significant media law cases--such as New York Times v. Sullivan or Time v. Hill--in which the media have been drawn into litigation as defendants. That is, Gannett could have continued its longstanding practice of defending itself in libel and other cases when they arose rather than taking the legal offensive, but it did not, and we wondered why.

Our findings and conclusions are based on the analysis of reported opinions, Gannett briefs, interviews with and statements and speeches by Gannett officials, Gannett financial reports, Soloski's dissertation research and news and feature articles on the company and its business operations. The paper is not intended as a thorough analysis of the decisions in Gannett v. DePasquale, although that case is the central focus of the legal section. Some of our conclusions are speculative, being based on inferences from our primary and secondary sources. We have chosen to engage in speculation because we believe that assessments of the role of larger newspaper chains in the development of media law should not be postponed until its impact can be clearly seen in historical perspective. Our speculations may be found in the future to have been untenable, but we believe they are supported by the currently available evidence. Along with consideration of the effect of concentration of media ownership on news, editorial opinion, advertising and the public's access to an audience, it seems that the continuing discussion and debate in Congress and among media observers should include recognition of the effect of chain ownership on media law, an issue that has not been addressed previously.

Corporate Financing and Legal Aid

Before discussing Gannett's cases, it is necessary to examine the corporate relationship between Gannett and its newspapers.[5] Gannett Co, Inc., itself, owns very few newspapers directly; rather it owns subsidiaries that own newspapers.[6] The newspapers are organized into five regional groups, each headed by a group president. The ultimate, day-to-day authority in each of Gannett's newspapers is the individual publisher. But the publishers report directly to one of the regional group presidents, all of whom serve on the corporate Operating Committee, which handles day-to-day management matters.[7] Thus the publishers are in frequent and direct contact with one of two policy-setting bodies in the corporation.[8]

In order to insure local autonomy in the selection of news, most chains are primarily concerned with the "bottom line." That is, publishers are reviewed on how well they meet the financial goals set for the papers by the chain. Gannett, according to one executive, looks at among other things profit-loss statements, productivity and man-hours. Publishers are required to report this information regularly to the corporation. The publisher of a chain-owned newspaper is an employee of the chain, and how well he or she meets the profit goals set by the chain may determine what kind of future the publisher has in the chain. Publishers and several other individual newspaper management staff persons are included in both individual newspaper and Gannett profit-sharing programs, another incentive to devote attention to the newspaper's profits.[9] David Shaw of the Los Angeles Times quoted one Gannett executive as saying: "How good a Gannett paper is is really up to the individual editor. . . . Al (Neuharth) doesn't have time to keep close tabs on all 77 (c.q.) papers, and if you're

content to let your paper slide by and just try to make money so you'll be promoted to a bigger paper, well, he's sure not going to complain. . . ."[10] Gannett recently concluded a 10-year program a stated purpose of what was to demonstrate to Wall Street that its annual profits and profit growth from year to year were regular and predictable, making Gannett a sound investment.[11] Since Gannett publishers have operated under these incentives and pressures to keep profits up, it seems unlikely that a publisher would initiate potentially expensive litigation without the approval of corporate headquarters.

The high cost of litigation is no secret, and the cost of defending and further defining the First Amendment has been a subject of major concern among the media and journalism organizations.[12] The cost of one trip to the Supreme Court is generally out of reach of small- and medium-sized newspapers--which most Gannett newspapers are--without outside help.

The Nebraska Press Association found it necessary for several individuals to devote nearly full time for several months to raising over $100,000 to pursue Nebraska Press Association v. Stuart.[13] The money was contributed by "hundreds" of individuals, news media, news organizations and journalism organizations. In addition, the Nebraska Press Association received contributions of valuable in-kind services, such as the help of attorneys from the Reporters Committee for Freedom of the Press and legal help from the staff of one large newspaper not directly involved in the case. Phil Berkebile, manager of the Nebraska Press Association, said he thought his group would not be enthusiastic about taking another case to the U.S. Supreme Court, preferring to let someone else take the next turn.[14]

Among other organizations, the Reporters Committee for Freedom of the

Press, the American Society of Newspaper Editors and the Society for Professional Journalists, Sigma Delta Chi (SPJ/SDX) have conducted fund-raising campaigns for First Amendment cases. At the last SPJ/SDX convention the hat was passed for contributions to the Legal Defense Fund, and national president Phil Dessauer recently sent a fund-raising letter to 35,000 SDX members for more money. The Reporters Committee, which provides cost-free legal assistance to the media and reporters in free-press cases, has solicited funds, including large donations from foundations for its work and reported recently it still had a current deficit of $31,000.[15]

What Gannett's total costs for its court-access and open meeting and open record cases have been is not known. Former Gannett attorney Gary C. Seacrest reported in the Gannetteer in January 1977 that a gag order challenge with only one appeal cost the Rochester papers almost $10,000.[16] In an interview, Seacrest estimated that the final cost of Gannett v. DePasquale would be somewhat less than the Nebraska Press Association case, because the Nebraska case had bounced back and forth between the U.S. and Nebraska Supreme Courts whereas the DePasquale case followed a more direct route to the Supreme Court.[17] Robert H. Giles, executive editor of the Rochester papers, said that the DePasquale case, prior to being argued before the Supreme Court, cost more than $25,000.[18]

Whatever the total costs, Gannett Co., Inc. and its subsidiaries have borne all the costs of litigation without soliciting or accepting funds from other news and journalism organizations. According to Giles, Gannett Co., Inc. has underwritten all the cost of Gannett v. DePasquale. The individual newspaper bears the financial burden of most legal costs at

the local level, but if a case involves a major appeal effort, Gannett Co., Inc. helps to finance the case.[19] Giles said that the local publisher budgets money for legal expenses, paying for most cases at the local level, but

> if the decision is made by the local publisher, and with the encouragement of Gannett Co., to begin a major appeal effort on a case that is deemed to be quite significant in the free-press area, then there is generally a tendency for the corporate (c.q.) to assist with money. Certainly Gannett Co. is not going to allow any of its papers to carry the full burden of a major legal fight, the benefits of which we all share and consequences as well.

Which unit bears the financial burden is, in effect, immaterial because, in the final analysis, the corporation, itself, must pay for all litigation.

Besides helping member papers bear the financial burden of freedom of the press cases, Gannett also provides its papers with free legal assistance. Gannett has one attorney on staff called the "First Amendment lawyer" who coordinates all the media law actions of the Gannett papers. Gannett hired its first lawyer to deal exclusively with media law in the fall of 1976.[20] Gannett papers send all briefs, filings and pleadings for their cases to corporate headquarters, and it is the job of the First Amendment lawyer to attempt to see to it that legal arguments are consistent throughout the chain. Gannett's current First Amendment lawyer, Alice Neff Lucan, said:

> Our newsrooms have continuous problems, daily. And we've got 78 (c.q.) newsrooms. And though each newsroom has local counsel, we try to watch what they're doing and give them some guidance so that our positions have some consistency. . . . And without somebody at the helm, as it were, to decide the legal issues, the publishers are almost without guidance. Their local counsel is no good to them because the local counsel does not see what's happening in all 78 newspapers in all 30 states. The final decision

> to pursue litigation is the publisher's, but I help to give him some perspective on what else is happening. Whatever benefit we have as a company is that we can establish precedent in 30 states. It is my job to keep us consistent.[21]

Gannett's in-house lawyer acts as liaison and advisor to a paper's local counsel. Gannett provides local counsel with other papers' legal briefs, memoranda, court cases and model briefs. Simply, what the Gannett lawyer does, to quote a former Gannett First Amendment attorney, is "lead (local counsel) by the hand" in freedom of the press cases.[22] Since the Gannett lawyer, in effect, does a considerable amount of legal research for local counsel, the cost of a case can be significantly reduced, particularly when the papers pursue similar cases. Gannett keeps its publishers informed of Gannett's constitutional cases and other media law cases through an in-house publication called Wire Watch.

As shown in statements by its executives, an advertising campaign and its litigation itself, Gannett has provided evidence that it's corporate policy is to pursue freedom of the press cases.[23] Seacrest explained," . . . Gannett encourages its papers to fight for access (to information) and freedom of the press issues. We (Gannett Co., Inc.) encourage them by providing them with resources such as legal briefs and other legal help."[24] Robert Giles said:

> It is not really a major financial burden at this time for the Gannett Co. to pursue cases. They're very active in the courts, whether it's a big paper or a small paper. . . . Al Neuharth and John Quinn, vice president for news, are very active in encouraging various Gannett papers to be alert to any infringements on activities of our reporters. I think this is a clear corporate committment to do this. Of course this results in a lot of court activity.[25]

Within the past year, Neuharth has become a frequently outspoken

advocate of the news media's active participation in First Amendment litigation and critic of the Burger court's decisions in recent press-freedom cases. In his role as Gannett's chief executive, Neuharth told the SPJ, SDX annual convention in November 1978: "The courts have leveled their guns on us, and they have scored some direct hits on the fortress of our freedom. But even if those walls are cracked, they are still standing, and we must remain standing with them, just as our colleagues did in the past."[26] Thomas L. Chapple, secretary and assistant general counsel of Gannett Co., Inc. said of Neuharth's speech: "To the extent that we (Gannett Co., Inc.) have any corporate policy that's it. . . . (I)t does put his (Neuharth's) imprimatur on what's been going on and he urges continued efforts to protect the First Amendment."[27] As president of the American Newspaper Publishers Association, Neuharth opened and closed his keynote address to the annual convention in April 1979 with a prayer for the First Amendment, and an elaborate 18-foot high illuminated scroll on which the First Amendment was written was the symbolic emblem of the convention.[28] Neuharth said: "The Bill of Rights is being taken for granted and its First Amendment is in trouble. We must take up the fight to rescue it. We must be neither too petulant nor too patient. But we must be firm and uncompromising on principles; we must be smart and tough in our strategy."[29]

Gannett has also taken Neuharth's message to the general public in corporate ads in several large-circulation publications. In an ad appearing a week after the ANPA convention, Gannett outlined the courts' recent "threats" to journalism and reported that the 1,300 publishers at the ANPA convention had dedicated the convention to "making (the First

Amendment) mean what is says--from the first word to the last. . .," using words from Neuharth's keynote address.[30] Shortly before the Supreme Court's decision in Gannett v. DePasquale and shortly after the Federal Communications Commission approved a television station license transfer that permitted the final merger of Gannett and Combined Communications, Gannett embarked on a $1.5 million advertising campaign designed to link Gannett and advocacy of freedom in the readers' minds.[31] (See Figures I and II.) A full-age ad in the New York Times, the Wall Street Journal, the Washington Post and Gannett newspapers and a double-page spread in Time and Editor and Publisher said among other things: "We take our First Amendment responsibility seriously at Gannett. Not just because it protects the journalists' right to print or broadcast the news. But because it is the cornerstone of our democracy, the people's guarantee of freedom."[32] Despite the message in these ads and in Neuharth's speeches and the activity of its First Amendment lawyer, Neuharth told a questioner during an appearance before the National News Council in June 1979 that Gannett has "no corporate policy on First Amendment questions 'or anything else. The editors and publishers do not feel that anyone is looking over their shoulders and saying, Stay within this range.'"[33]

An examination of the series of eight courtroom and court-record access cases involving Gannett also indicates there is a corporate policy to pursue freedom of the press issues. Although other legal scholars have dealt with the cases involving Gannett papers as isolated cases, we will deal with them as a group, arguing that the cases seem to be orchestrated for particular purposes.[34] Most of the courtroom and court-record access cases began within a few months of each other, and all of the cases began

Figure I

Figure II

FREEDOM BEGINS AT HOME

Gannett is a nationwide communications company with a world of different voices: 80 daily newspapers, 7 television and 12 radio stations in 33 states and two U.S. territories.

Yet the Gannett name is not widely known because of a deliberate policy. A policy based on a single word: freedom.

There is no single Gannett editorial voice. Every Gannett newspaper, every television and radio station is free to express its own opinions, free to serve the best interests of its own community in its own way.

The voice of the whole community.

At Gannett, responsible and responsive coverage of the whole community is not just our job. It's our responsibility.

Serving the best interests of a community means being its mirror. It means reflecting the varied tastes and interests and news needs of the old as well as the young. The rich as well as the poor. The powerful and the powerless.

And that means total community coverage. In the news. In features. In sports. And in the editorials—which must be the conscience of the whole community—constantly pressing for solutions to problems.

Newspapers and radio and television stations are forums for democracy. Places where people go to express and find diverse opinions. Without fear or favor or any question of fairness to all sides.

Places for the government to get consumer feedback, the public pulse, vital food for thought on important issues. The right places, too, for nourishing the economic well-being of the community and keeping its marketplace in good health through advertising services.

We care because we live there.

Every Gannett newspaper, every radio and television station strives in its own way each day to touch the lives of its readers, viewers and listeners. Each as distinct as the community it serves.

This is community journalism. And at its heart is local news. The news that touches the lives of everyone it serves.

It means being an investigator and exposing wrongdoing. It's being a guardian and watching over the community's well-being. It means being a recorder and noting the passage of daily life with its joys and sorrows, its trials and triumphs.

Our commitment to freedom.

At Gannett we have a commitment to freedom. Freedom for the men and women of Gannett to become more professional every day. Freedom to grow with a growing America. Freedom to share in the blessings of our free society and its free enterprise system. Freedom to fulfill our First Amendment obligations and to flourish with the opportunities of freedom.

We take our First Amendment responsibility seriously at Gannett. Not just because it protects the journalists' right to print or broadcast the news. But because it is the cornerstone of our democracy, the people's guarantee of freedom.

With our recently concluded merger with Combined Communications Corporation, we're moving toward a new and expanded world of total information services. But as we grow bigger, the same principles of editorial freedom, excellence and community service will still apply.

And so from Guam to the Virgin Islands, from Reno to Rochester, from Pensacola to Phoenix, from Atlanta to Hawaii, every Gannett newspaper, every television and radio station is free to set its own course, to meet its local news obligations, to express its own opinions. Free to serve the best interests of its own community in its own way.

Gannett

A world of different voices where freedom speaks.

Figures I and II, from Editor and Publisher (June 23, 1979) pp. 20 and 21.

after Nebraska Press Association v. Stuart was accepted for decision by the U.S. Supreme Court (See Figure III). What follows, then, is a synopsis of the cases.[35] The final section of the paper discusses some possible reasons for Gannett's decision to become so heavily involved in courtroom and court-record access cases.

Constitutional Access--The Right To Gather News

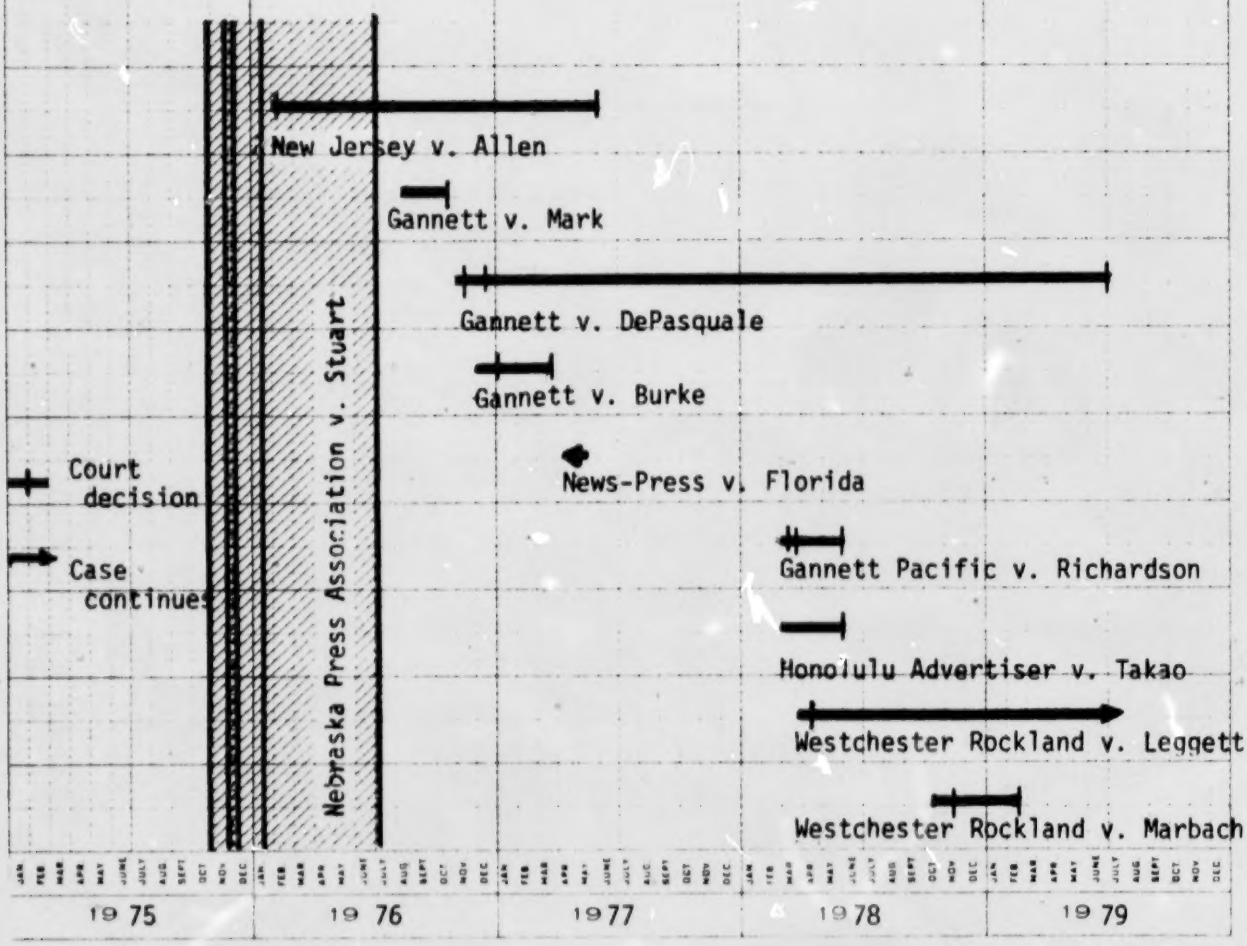
While the attention of the journalism community was focused in early 1976 on the U.S. Supreme Court, which would soon issue its decision in the Nebraska Press Association's gag order case, Gannett was pursuing a similar case through the New Jersey courts. The decisions in both Nebraska Press Association v. Stuart[36] and New Jersey v. Allen[37] provided the framework for subsequent Gannett cases on access to the courts and precedents for Gannett to use in arguing Gannett v. DePasquale.[38] Judges in several states also created the situations that precipitated Gannett's action. In the wake of Nebraska Press Association, which nearly prohibited direct restraints on the press, judges resorted to indirect restraints effected by closing courtroom doors to the media, sealing records and/or imposing restrictive orders on the participants in some cases.[39] It was the closing of doors and sealing of transcripts that Gannett has attacked in New York, Florida and Hawaii, following a strong, supportive decision in New Jersey v. Allen.

New Jersey v. Allen

Gannett, on behalf of its subsidiary the Bridgewater (N.J.) Courier-News, was involved in only one of two cases resulting in this decision. Gannett was joined in its appeal by the Home News Publishing Co., owner of

Figure III

Gannett Newspapers'
Court Access Cases,
1976-1979



the New Brunswick Home News. The other was appealed by the Trenton Times, a Washington Post newspaper.

In the Gannett case, the judge, who was presiding over the retrial of a defendant in an armed robbery and murder case in February 1976, ordered reporters not to report on a hearing on the admissibility of a confession until after the jury had been sequestered for deliberations. The newspaper companies then initiated appeals, first to the Appellate Division, which rejected the petitions, and then to the New Jersey Supreme Court. In the meantime, the judge had ruled the confession admissible, it was presented to the jury, and the defendant was found guilty, all before the Supreme Court had time to accept the appeal. Thus the case was moot and the decision of no practical application to the coverage of the Allen murder trial. The facts of the other case decided in New Jersey v. Allen were similar.[40] The New Jersey Supreme Court's opinion was issued in April 1977.

The question before the court was whether the restraining orders violated the First Amendment. Relying on Nebraska Press Association v. Stuart, which was decided in the interim between the appeal and this decision, the court ruled that the gag orders were illegal and stated emphatically that judicial proceedings, including evidentiary hearings conducted in open court, are matters of public record, and the media have "an absolute right to report" on them.[41]

Although the question of closed hearings was not raised in the case, the court devoted a considerable portion of its opinion to the subject. It said that a closed proceeding, in effect, is a "prior restraint on the news-gathering ability of the press."[42] The court said that evidentiary

hearings should be held in camera only after considering all the alternatives outlined in Nebraska Press Association and in Sheppared v. Maxwell, giving strong consideration to sequestering the jury in cases involving widespread publicity, and then only after a clear showing of serious and imminent threat to the integrity of the trial.[43]

Gannett v. Mark[44]

Gannet Co., Inc. in behalf of its Rochester newspapers, initiated its first New York challenge to an order closing a court session in August 1976 when Judge Donald Mark, on his own, closed a posttrial hearing on motions to vacate a guilty verdict in a gangland-style murder case that had been widely covered. The defendant in the case asked that the verdict be set aside on several grounds including juror prejudice. The judge said he closed the hearing to maintain the traditional secrecy of jury deliberations, which would be examined in the hearing, and to protect the jury members from embarassment and harassment that might result from publicity about the hearing.

Although the judge heard a Gannett argument that the hearing should be open, he denied the request. He did postpone the hearing to permit an appellate court to rule on Gannett's petition to have the closure order vacated. Gannett argued that the closed hearing would violate the Sixth Amendment provision for public trials. The case also raised the question whether the press has standing to request a hearing before a closure order is imposed.

The New York Supreme Court Appellate Division, which is a trial-level court, not the highest court in the state, ruled in October 1976 that judicial

hearings must generally be open and that it is appropriate for a judge to hear the media before closing a hearing.[45] The court said that under "unusual circumstances," and in "compelling factual circumstances," a judge has a right to close hearings.[46] But the court concluded that the reasons for closing this particular hearing were not adequate to invoke that action.

Gannett v. DePasquale

A month after the Mark decision, the Rochester newspapers filed their first petition in the DePasquale case. In the Mark case, the defendant's Sixth Amendment right to a fair trial was not an issue since the trial was completed, but the defendent's rights were at the center of arguments and decisions in the DePasquale case. And the object of concern was an item generally considered to be the sirgle most damaging information to disseminate before a trial, a confession.[47]

The criminal case involved charges of murder against two young men for the apparent death of a former policeman in Seneca County, N.Y. The defendants were captured in Michigan where they allegedly gave statements considered to be confessions. The confessions were important, because the body of the victim was never found. Gannett's Rochester media reported on the crime and capture but did not elaborate on the alleged confession beyond stating that incriminating statements had been made to Michigan police.

After pleading not guilty, the defendants filed motions to suppress the alleged confessions. At the request of the defendants, Judge Daniel DePasquale closed the evidentiary hearing on the grounds that reports on it

might cause prejudice to the defendants. The judge denied a written request for postponement of the suppression hearing to permit Gannett to argue that it be opened. After the completion of the suppression hearing, Gannett moved to vacate the closure order and to request a copy of the transcript. Judge DePasquale conducted a hearing on Gannett's motions, but denied them. Gannett took the case to the Appellate Division.

Gannett argued that the closure order violated the Sixth Amendment requirement for a public trial, its First Amendment rights by serving as a mere substitute for a nearly forbidden gag order, and its Fourteenth Amendment due process rights because of a denial of notice and hearing on the closure order.[48] Before the decision was issued by the Appellate Division in December 1976, the defendants pleaded guilty and Gannett was offered a transcript of the closed hearing. Thus, like New Jersey v. Allen, the case was moot and Gannett had no practical need for a decision on this particular case.

The Appellate Division, however, ignored the issue of mootness and addressed the constitutional issues, deciding all of them in favor of Gannett. The court said that the Sixth Amendment requirement for a public trial is intended to benefit both the accused and the public, here represented by Gannett.[49] It ruled that the effect of the closure order was the same as the effect of a gag order, and therefore a judge must apply the tests outlined in Nebraska Press Association before issuing a closure order.[50] The Appellate Division found that the judge had not done so.

DePasquale and the criminal defendants appealed the decision to New York's highest court, the Court of Appeals, which accepted and decided the

case despite its mootness, because of the significance of the free press/ fair trial issues raised.[51] Although the Court of Appeals ruled that a pretrial evidentiary hearing was not part of the trial covered by the Sixth Amendment, the court treated the pretrial hearing as a stage of the trial in its opinion.[52]

The Court of Appeals, in a December 1977 decision, not only upheld Judge DePasquale's decision to close this particular evidentiary hearing, it also ruled that such hearings are "presumptively closed to the public" in New York. Not closing such hearings, the court said, would involve the court itself in the dissemination of potentially tainted evidence, making the court "a link in the chain of prejudicial disclosures" the court should protect against.[53]

The court mixed the First and Sixth Amendment claims together and ruled that the media's and public's Sixth Amendment interests in public trials were less significant than the defendants' Sixth Amendment rights to a fair trial.[54] The court summarized this position, stating: "the Constitution should not be considered as a substitute for a sunshine law."[55] The court dismissed alternative means for protecting the defendants' rights as generally inadequate.[56] Instead, the Court of Appeals cited Justice Brennan's concurring opinion in Nebraska Press Association in which he suggested that closing pretrial proceedings would be a means of avoiding the constitutionally questionable imposition of a gag order on the media.[57]

While deciding that pretrial evidentiary hearings generally should be closed on constitutional grounds, the court found that notice and hearing should be provided because, in some circumstances, such as when the

defendant was a public official, public interest might require an open pretrial hearing.[58] The court left the impression, without stating so directly, that the media must demonstrate the magnitude of "any genuine public interest" in an open hearing and that the judge must "distinguish mere curiosity from legitimate public interest" before opening a pretrial evidentiary hearing.[59]

In a strongly worded dissent, Judge Lawrence Cooke, joined by one other member of the Court of Appeals, accepted the argument that the right to gather information is inherent in the First Amendment right to report it.[60] This is the position that the First Amendment protects news-gathering, an argument Gannett made in its appeal of DePasquale on First Amendment grounds.[61]

Gannett appealed the Court of Appeals decision because it was "so atrocious," according to Seacrest.[62] But decisions between the time of appeal and the Gannett decision made some Gannett officials nervous about the outcome.[63]

In a 5-4 decision, the U.S. Supreme Court upheld the New York Court of Appeals decision and may have gone beyond it to permit the exclusion of the media from a trial as well as pretrial proceedings.[64] Writing for the majority, Justice Stewart found no Sixth Amendment public right to a public trial. "The Constitution nowhere mentions any right of access to a criminal trial on the part of the public; its guarantee. . . is personal to the accused." Stewart's broad statement, referring to a criminal trial rather than simply the pretrial evidentiary hearing in question, has been read by editorial writers and others as going beyond the New York Court of Appeals decision.[65] Stewart did point out the special vulnerability of

a defendant's fair trial rights in an evidentiary hearing where the subject is the reliability and legality of acquisition of evidence so that tainted evidence may be kept from jurors. Stewart specifically declined to express an opinion on the New York court's requirement that the media should be afforded notice and hearing before a closure.

Three concurring opinions addressed points not made in Stewart's opinion or emphasized his points. Justice Powell said he would recognize an undefined First Amendment free press and a Fourteenth Amendment due process interest of the press to be present at a hearing, though those implied rights are not absolute.[66] He said the court should have provided constitutional standards and procedures for the guidance of judges in closing proceedings. Justice Rehnquist wrote the broadest and most far-reaching opinion. He said judges could close proceedings for reasons other than the protection of the defendant's right to a fair trial and that no reason need be given since 'the public does not have any Sixth Amendment right of access to such proceedings." Rehnquist specifically extended his conclusions to cover trials as well as pretrial proceedings and said there is no need for a hearing if all parties to a case agree to closure. Chief Justice Burger would apparently limit the ruling to pretrial proceedings.

Justice Blackmun wrote a dissenting opinion concurred in by the three other justices on the losing side of the case. Blackmun found a public right to a public trial and pretrial proceedings in the Sixth Amendment. But he wrote that that right, as it applies to the media, is no greater than or different from that accorded the general public. The right to a public trial is not absolute, however, but a judge would have

to make a determination that the right of a defendant to a fair trial would be hampered by a public proceeding before a closure would be permitted.

Gannett v. Burke[67]

The Rochester media challenged a court order sealing the files of three cases pending in a federal district court. In the case involving allegations of organized crime's involvement in the award of public housing contracts in Rochester, the government prosecutor requested that the files be sealed. The request came after the Gannett newspapers reported that, according to documents filed with the court, some witnesses had expressed reluctance to testify because of their fear of retribution.[68] Gannett sought a writ of mandamus from the Second Circuit Court of Appeals ordering that the files be unsealed.

In a 2-1 decision in January 1977, the court denied the petition without opinion. The dissenting judge wrote that a hearing should have been conducted and the court should have considered less restrictive alternatives before sealing the records.[69] Before a Gannett petition for a rehearing could be addressed, the trial judge unsealed the records after the prosecutor withdrew the request that the files be sealed.[70]

Westchester Rockland Newspapers v. Leggett[71]

Gannett's group of nine suburban New York City newspapers has initiated two appeals of a trial judge's ruling closing a pre-trial mental competency hearing for a man charged with 30 counts of rape, sodomy, assault, robbery and abuse of women and children. The judge closed the hearing on

the grounds that it would be difficult to find impartial jurors if deviant sex involved in the charges and testimony to be presented in the hearing were reported.[72]

On appeal to the Appellate Division, Westchester Rockland Newspapers argued that it was important that the hearing be open because in the event the defendant was found incompetent, there might be no trial and no opportunity for the public to be informed about the case. The Appellate Division in an April 1978 decision denied the newspapers' petition, basing its decision entirely on the Court of Appeals ruling in Gannett v. DePasquale.[73] The decision has been appealed by Westchester Rockland Newspapers to the New York Court of Appeals.[74]

Westchester Rockland Newspapers v. Marbach[75]

Gannett's New York City suburban papers in November 1978 appealed a lower court order closing a pretrial discovery hearing and sealing the transcripts of depositions taken in advance of a trial on a case involving the Unification Church. The church had filed an action against two New York communities asking that its real property be exempt from property taxes on the ground that the church was a religious and charitable institution. At first the church objected to the presence of an attorney representing another jurisdiction in which the church had substantial property holdings. A judge ruled the proceedings were open to the public and a reporter for the Westchester Rockland Newspapers was allowed to attend. Then the church objected to the broad nature of questions being asked. Judge John C. Marbach said the questions could continue, but he barred the media and prohibited the press to have transcripts of the

proceedings.

On appeal the Westchester Rockland Newspapers presented a narrow argument that, though not all pretrial examinations are public. the First Amendment gives the press the right to attend "where the public interest is substantial," saying that the public interest was great in this case involving the much publicized Unification Church that paid substantial real estate taxes.[76] The Appellate Division ruled in February 1979, with one partial dissent, that the First Amendment does not grant the right to attend all stages of a civil proceeding and that a New York law also provides pretrial examinations be closed and records sealed. The court said that issues irrelevant and inadmissible to the trial might come up in the pretrial hearing and should not be disseminated until the admissibility of the testimony is determined. The court cited Gannett v. DePasquale in stating that the court is empowered to limit press and public access to court proceedings under some circumstances. The judge dissenting in part from the majority said that the transcript should be made available to the newspaper.

News-Press Publishing Co. v. Florida[77]

Following a plea-bargained guilty plea in a murder case, a reporter for Gannett's Fort Myers (Fla.) News-Press requested access to voluminous depositions taken in the case. The reporter was told they had been sealed by court order. The News-Press requested a hearing on a petition to vacate the order, was heard by the judge and denied access to the depositions. The judge, in explanation of his ruling, said that there were "good and cogent reasons" and that "more harm. . . than good" could come from their

release.[78] The newspaper appealed the decision to the District Court of Appeal.

In a May 1977 decision, the appellate court ruled that a judge could seal court records only for "compelling reasons" which must be specifically explained. The court found the reasons cited by the trial court inadequate and remanded the case for reconsideration in light of its decision. The Court of Appeal also found that the judge had properly permitted the newspaper to intervene since the order would make it difficult for the press to gain information it might wish to publish.

The Hawaii Cases

Both Hawaii cases involved Gannett Pacific, the subsidiary owning the Honolulu Star-Bulletin, as one of three media plaintiffs. The other two were the Honolulu Advertiser, the newspaper with which the Star-Bulletin has a joint operating agreement and shares a Sunday edition, and Lee Enterprises, owner of television station KGMB. Both cases occurred during the same time period in March 1978 and involved the same trial judge, Robert Richardson.

Honolulu Advertiser v. Takao[79]

A reporter for one of the media involved in the case attended an open preliminary hearing for a man on charges of rape and sodomy. Following the hearing, Judge Richardson dismissed the rape charge. That action provoked considerable public reaction, including the gathering of 23,000 signatures on petitions attacking his fitness as a judge and a rally sponsored by a women's anti-rape group. During the period of the

controversy, a grand jury independently reviewed the evidence against the accused and returned indictments for both rape and sodomy.[80]

As a result of the public reaction, the reporter who had attended the preliminary hearing asked for a transcript to assist her in writing a story on the situation. She told the court she had taken few notes at the time of the hearing because she had not intended to report on the session. The judge denied her request and sealed the transcript, claiming that release of the transcript would prompt publicity on the question of whether the trial judge had had a basis for dismissing the charge and that would prejudice the defendant's chances for a fair trial.[81] The media appealed to the Hawaii Supreme Court.

Gannett Pacific v. Richardson[82]

Judge Richardson had been conducting a preliminary hearing in another controversial case and rejected two defense motions to close the hearing. Finally, he did close the hearing on the grounds that the notoriety of the cases and criticism of the court might make it difficult for the defendants in the case to get a fair trial.[83] The three news organizations sought an order prohibiting enforcement of the order. The preliminary hearing was delayed until the circuit court denied the petition and again until the Hawaii Supreme Court granted an interim order prohibiting closure, except for consideration of allegedly inadmissible evidence.

The Decisions

The Hawaii Supreme Court handed down a final decision in Gannett Pacific v. Richardson and decided Honolulu Advertiser v. Takao on

May 26, 1978. Both decisions were unanimous.[84] The court presented its opinion on the openness of preliminary hearings in Gannett Pacific. The court considered a claim of a First Amendment right to gather news only indirectly, equating the press and public interest in the Sixth Amendment provision for open trials.[85] The court ruled that judicial proceedings should be open, but it provided that on a defense motion a judge shall close portions of hearings during which the admissibility of evidence and likelihood of prejudice to a defendant's rights are considered.[86] The court outlined a test for judges to use in considering whether to close preliminary hearings. It involves consideration of the nature of the evidence, the probablity of information about it reaching potential jurors, and the availability of alternatives that might neutralize the effects of disclosure of the information.[87] In Hawaii, the court ruled, the media and others not party to the criminal case could not be heard before closure orders were imposed. The remedy is a petition for a writ of prohibition to the circuit court.[88]

The questions in the Honolulu Advertiser case were narrower, relating to the facts of an unusual situation. Here the court dismissed a First Amendment claim on the grounds that the order sealing the transcript did not restrain the media from reporting what had been observed first hand.[89] The court said the First Amendment does not protect the media against the incidental burden--not having a back-up transcript for inadequate reporter's notes--of court orders. The court ruled that a judge has authority to seal a transcript and that the judge in this case had reason to be concerned about possible prejudice to the defendant's rights.[90]

Legal Implications

While nine cases in three years may not seem large for an 80-newspaper chain, our findings suggest that it is significant in several respects. The Gannett cases have been initiated as part of an apparent corporate policy to pursue courtroom and court-record access cases. Our findings suggest, but do not prove, that Gannett's policy has been aimed specifically at generating a case that could present the basic issues and argument for a constitutional right of news-gathering to the U.S. Supreme Court for review. These cases occurring in several states, and being coordinated from Rochester in order to present a consistent Gannett position, seem to have been intended to establish precedent broadly, rather than simply to settle immediate courtroom and court-record access problems. It is this coordination that seems to represent a new phenomenon in a news organization's approach to First Amendment law. Given Gannett's resources as one of the largest and most wealthy news organizations in the country, this approach to First Amendment law could represent the ability of Gannett to determine at least what issues will be addressed by the court system--comparable to agenda-setting in the news--and possibly the ability to manipulate the outcome as well.

Gannett's orchestrated attack on court secrecy seems to have been directed at an ultimate Supreme Court decision on this unresolved issue.[91] Having so many newspapers as members of the Gannett chain, the company was in a position to generate a variety of cases and had the opportunity to select which one to pursue to the top. The choice of Gannett v. DePasquale was in part made by the New York Court of Appeals ruling against Gannett,

but the company was still in the position to decide whether the appeal was worth the trouble and expense, since the factual question had been settled a year earlier to Gannett's benefit. In contrast, other large news organizations that have taken cases to the Supreme Court have had less opportunity to choose. In fact, many other major First Amendment cases have begun with the news media on the defensive--in libel or privacy suits, under contempt citations, for antitrust law violations, after orders restraining publication.[92] While principle may have been important, part of the objective of the news organizations in the defensive cases was the desire to void fines, release reporters from jail sentences, and permit publication of restricted material.

Gannett, however, has been on the offensive, able to decide whether to challenge a courtroom closure in the first place, able to withdraw an appeal in some situations when cases became moot or to pursue them further. (Gannett did not, for example, appeal the Hawaii decisions.)[93] These choices result, in part, from the very fact that Gannett is a large chain of newspapers. Being as large as it is, Gannett simply has many more potential opportunities to participate in the legal process if it chooses than some of the other large organizations in the news business that are more geographically concentrated. In this situation,then, what Gannett or another large chain decides to do is important, perhaps vitally important to the development of federal and state media law. It is fair, then, to ask whether Gannett has made good choices to date.

In the area of courtroom and court-record access, Gannett's consistent argument has been that there is a constitutional right to gather news implied in the freedom to publish. And Gannett has argued that under this

right and a public right to a public trial under the Sixth Amendment, pretrial hearings on the suppression of evidence, among other judicial sessions, should be open. It has also argued that the media have a due process right to notice and hearing on motions to close court hearings and seal records. The U.S. Supreme Court rejected these arguments in its decision in Gannett v. DePasquale.

Recent surveys of historical and legal precedent by three media-law scholars indicate that at most there is a qualified right to gather news; at worst, no such right at all.[94] On the argument that the First Amendment has always been interpreted as including the right to gather information Harold L. Nelson concluded with the observation: "I can't think of a more dubious proposition for a journalist to try to support."[95] Donald M. Gillmor summarized his findings: "Those who believe that free press and free news-gathering are inseparable are not totally wrong; they simply overstate their case. . . ."[96] One might draw the conclusion from these findings that pushing for such a right when the Supreme Court seems to be in a conservative phase and not generally supportive of the media was unwise.

Gannett has not been alone in asserting a right to gather news. The reporters Committee for Freedom of the Press, the American Newspaper Publishers Association, The American Society of Newspaper Editors and the New York Times all filed amicus briefs with the U.S. Supreme Court in Gannett v. DePasquale. A total of 36 news organizations and journalism associations filed briefs in behalf of the New York Times' position in 1978 in the Farber case.[97] That case asserted a right to gather news unfettered by subpoenas. But it might be significant that that was a defensive case in

which the Times suffered substantial financial penalty and other media anticipated similar situations.[98] Others have argued that the Farber case was a poor one on which to press either the news-gathering or reporters' privilege claims, because the New York Times reporter was withholding information from a criminal defendant, not the government, as has been the case in most past privilege cases.[99]

The stakes in the Farber case were a large fine on the Times, the continued failure of the press to win court recognition of a constitutional reporters' privilege, and the loss of an opportunity to win support of a constitutional right of news-gathering. Those things were lost when the U.S. Supreme Court denied certiorari.[100] In the DePasquale case, the right of news-gathering was tied to a claim that pretrial evidentiary hearings be open. The stakes in the case--and another basis on which to evaluate the quality of Gannett's choices of litigation--are seen in the consequences of its court-access litigation to date.

In a sense, Gannett was in the situation the Supreme Court faces when circuit courts have reached conflicting conclusions in similar cases. For the sake of consistency in the law applied to its far-flung newspapers, Gannett needed a Supreme Court decision in Gannett v. DePasquale to resolve the conflict between the decisions its cases had produced. The highest courts in New York and Hawaii had ruled there is no First Amendment news-gathering right to attend pretrial hearings on the admissibility of evidence and that such hearings should generally be closed. In New Jersey, the state Supreme Court found a right to gather news inseparable from the right to publish and ruled that pretrial suppression hearings should generally be open. The Florida Court did not actually address the First Amendment

question in the Gannett case, but it did rule that court records could be sealed only in limited circumstances. In short at the lower court level Gannett's litigation backfired in New York and Hawaii and succeeded in New Jersey, and the U.S. Supreme Court upheld the New York decision and went even further in limiting the opportunities of the press to gather information about the judicial process.

The practical application of the lower court Gannett decisions, which may serve as examples of how the Supreme Court's decision in Gannett v. DePasquale will be applied in other states, is most clear in New York. Since the New York Court of Appeals decision in Gannett v. DePasquale in 1977, New York judges have relied on that decision as precedent to close at least five pretrial evidentiary hearings, two pretrial mental competency hearings, and a pretrial discover hearing.[101] Two judges have permitted reporters to attend evidentiary hearings but restricted their coverage of the sessions, and one court denied a newspaper permission to publish photographs that had been presented as evidence and seen by the jury in open court.[102] New York Appellate division courts have upheld at least five of these rulings, relying on Gannett v. DePasquale as precent.[103] Gannett staff members watching the New York courts report other instances in which trial courts have used the DePasquale decision as precedent.[104] Gannett's newspapers continued to challenge court closings in New York while the DePasquale case was awaiting a U.S. Supreme Court decision.[105] Its Westchester Rockland newspapers appealed two of the closings cited above.

The closing of pretrial hearings as a matter of law or policy is regarded by the Reporters Committee for Freedom of the Press, the American

Civil Liberties Union and others as harmful to the public's interest in knowledge of the conduct of governmental affairs.[106] According to the Reporters Committee for Freedom of the Press, 90 percent of criminal indictments are disposed of in the pretrial stages of the judicial process.[107] Thus information about the majority of cases could be lost by the Supreme Court's upholding the New York Court of Appeals ruling if it is interpreted to cover other sorts of pretrial hearings as has already happened in New York. And the language in the majority opinion in the case implies that criminal trials may also be closed at the discretion of the judge.[108] The executive editor of the Gannett Rochester papers that appealed the DePasquale decision said one result of the New York ruling his staff had already seen before the Supreme Court decision was a problem for defendants because "very often some of the evidence to be discussed at a pretrial hearing involves situations in which there are serious questions about police behavior--infringement of defendant's rights, forced confessions, improper arrests." Giles predicted that law enforcement officials would use the closed hearing "as a method of cleansing improper police behavior from the record before and if the case gets to public trial."[109]

By appealing this case, Gannett in fact determined the nature of the Supreme Court's agenda on the issue of public access to the courtroom. By asserting the right of news-gathering in the context of access to the courtroom, Gannett, in effect, manipulated the outcome because of the alternatives that precedent on the right to gather news and a public right to a public trial provided the Supreme Court. And the court did not exercise judicial restraint by focusing its attention on the pretrial hearing alone; it went beyond that to include the actual trial. The decision in

the case underlines a cause for concern about the potential power Gannett and other large chains have to determine the nature of First Amendment cases and law in the future. In explaining that Gannett Co., Inc. would help finance a major appeal by one of its newspapers, one Gannett official pointed out that the reason was that the decision in such a case would ultimately benefit or injure all Gannett newspapers, making it a proper corporate concern.[110] The decision, of course, affects all media despite the facts they were not party to the case and some of them apparently chose not to appeal similar decisions of their own. Gannett has used its power to define legal issues at the state level in statutory access cases. Although the impact of Gannett's statutory access cases applies only in the states in which the cases occur, Gannett's First Amendment lawyer points out that one benefit of the company to its newspapers is its ability "to establish precedent in 30 states."[111]

Value to Gannett

In recent years, newspaper chains in the United States have come under severe criticism and direct attack because of the growing concentration of media ownership. In December 1978, the Federal Trade Commission sponsored a two-day symposium to investigate the concentration of media ownership. FTC chairman Michael Pertschuk opened the meeting saying: "We must examine whether the right of free speech can be dissassociated from the economic situation of the media. . . . The First Amendment protects us from the chilling shadow of government interference with the media. But are there comparable dangers if other political institutions assume control of the media."[112] Most of the individuals who testified before the FTC argued

that there is a danger in the media being concentrated in the hands of a few individuals and corporations. The FTC symposium was boycotted by the American Newspaper Publishers Association headed by Gannett's president Allen Neuharth. The ANPA claimed the FTC symposium was not the proper vehicle to discuss media ownership and that the agenda set by the FTC was not properly balanced.[113]

U.S. Sen. Larry Pressler (R-S.D.) announced at the symposium that he was sponsoring legislation to limit the number of newspapers any one individual or corporation can own. The legislation may limit ownership to 10 newspapers and prohibit companies from owning related properties such as polling firms."[114] This limitation seems to be aimed specifically at Gannett which owns the Louis Harris Associates polling firm. Hearings on concentration of media ownership were held in June 1979 before the Senate Select Committee on Small Business.[115]

The National News Council has recently completed a year-long study of concentration of media ownership. The findings have not yet been released.[116]

The active acquisition plans followed by the large newspaper chains in the United States have focused attention on the issue of media concentration. Chains such as Gannett have been spending considerable time and money on public relations efforts to defend their activities. Gannett has regularly taken out ads in the Wall Street Journal, Editor and Publisher, the New York Times, and its member newspapers stressing the advantages of chain membership and the editorial freedom it allows its member papers. And there is evidence to suggest that Gannett has embarked on a long-range plan--called Gannett II--to improve its public and journalistic image.[117] Gannett recently announced the adoption of a recruitment and promotion plan

for women and minorities.[118] The company announced last year that it plans to sell its Rochester, N.Y., television station to a black group. The plan was predicated in the Federal Communications Commission's approval of the license transfers between Combined Communications and Gannett, which were recently granted.[119] If the sale is consummated, the Rochester station will be the first VHF-TV station and the first network affiliate to be owned by blacks. And Gannett will be out of the cross-ownership business in Rochester.[120] What, then, are some of the potential public relations benefits to Gannett in pursuing freedom of the press cases, the DePasquale case in particular? All of the courtroom and court-record access cases involving Gannett began shortly after the Nebraska Press Association case was accepted for decision by the U.S. Supreme Court. Thus, the decision by Gannett to become particularly active in constitutional access cases seems to have occurred in 1976. In the fall of 1976, Gannett hired its first lawyer, Gary Seacrest, to deal exclusively with media law. Seacrest's family owns the North Platte (Neb.) Telegraph, the local paper involved in Nebraska Press Association v. Stuart. Seacrest said that his family's involvement in Nebraska Press Association made him enthusiastic about pursuing Gannett v. DePasquale.[121] Gannett experienced its largest growth in the number of newspapers in 1977 when it added 20 papers in 10 states. Most of these acquisitions were pending in 1976, the year Gannett began pursuing courtroom and court-record access cases (see Figure III.)

It is possible that Gannett will point to its activity in media law cases as evidence that chain-ownership of newspapers provides papers with legal and financial resources to fight for freedom of the press and that the chain is indeed concerned with maintaining freedom of the press, not

just maintaining profits. Gannett's court activity suggests that a chain actually encourages member newspapers to be active in free press endeavors. Gannett's active pursuit of these cases may be an important argument on Gannett's side if the issue of limiting media concentration ever gets serious consideration in Congress, the FTC or the courts.

Gannett's court cases may also go a long way towards silencing some of its critics within the journalism community. Had Gannett won its Supreme Court case, the company would probably have been heralded as the latest champion of freedom of the press. Having lost, it may be venerated as a martyr. Some of Gannett's newspapers have already won freedom of the press and First Amendment awards including an award for initiating Gannett v. DePasquale.[122]

Neuharth has committed Gannett to achieve recognition within the journalistic profession in the next ten years. Neuharth told Gannett executives in December 1977: "In the next decade, we must go public with the professional performance of Gannett Newspapers, individually and collectively, just as we went public with the profit performance of Gannett Co., Inc., 10 years ago."[123] Neuharth has also said: "Wall Street didn't give a damn if we put out a good paper in Niagra Falls. They just wanted to know if our profits would be in the 15-20% range. Now they know. Now we can start improving the papers themselves. . . . No matter how hard you try or how well you produce in El Paso or Bridgeport, your efforts are not as noticed as they would be in New York, Washington, Los Angeles, Philadelphia or Chicago."[124] One wonders, in light of this corporate objective, whether Gannett v. DePasquale was intended to place Gannett in the company of the more distinguished newspapers represented in

New York Times v. Sullivan or U.S. v. Washington Post.

Another possible benefit to Gannett in pursuing these cases is financial. AS the days of the independent newspaper draw to a close, many publishers of independent newspapers are thinking twice about selling their papers to chains. Cloy A. Richards, publisher and editor of the Merkel (Texas) Mail, in a letter to Editor and Publisher wrote: "One way to stem chain control of newspapers is for the publisher looking to sell to sell to an individual. . . . It is up to the independent publisher to stem the growth of chains. If we don't, the government will step in. The American people will not stand for a so-called 'free-press' that is controlled by chains."[125] Not only are independent publishers questioning the advisability of selling their papers to chains, the competition between chains is intensifying. The Times Mirror Co., the financially largest newspaper chain in the United States, was outbid by Capital Cities Communication in its effort to purchase the Kansas City Star in 1977. In another incident, Times Mirror offered $40 a share (about $250 million total for Booth Newspapers but was outbid by Samuel I. Newhouse who offered $47 a share ($300 million total).[126]

If we assume that Gannett can match an offer to buy a newspaper made by a competing chain, Gannett, because of its active pursuit of freedom of the press cases, may have an advantage over its competitors. A publisher deciding which chain to sell to may select Gannett because of this activity. Thus Gannett may be willing to make a relatively small financial investment in freedom of the press cases because the return on that investment may be future media acquisitions. Charles B. Seib quoted

the publisher of the Grand Junction (Colo.) Daily Sentinel as saying that the reason he sold his paper to Cox Enterprises was the result "of growing awareness on my part that, as you look at the court decisions that have been coming down lately, the changes in the libel laws and the rest, you realize that the judiciary holds all the cards, at least all the high ones. . . . A small paper. . . probably couldn't even protect itself anymore."[127] Seib continued:

> . . . the Supreme Court is in one sense an ally of Gannett and other chains in their persistent quests for even bigger pieces of the media pie. By reducing the press' First Amendment protections, it is increasing the risks and burdens of independent newspaper ownership. As the Colorado publisher indicated, this can make offers of chains more tempting.[128]

Gannett officials say their immediate objective for the future is to own 100 newspapers.[129] One product of the reorganization of Gannett's top management following completion of the merger with Combined Communications was the establishment of a new Development Committee. Neuharth said the role of the committee is to "explore acquisitions, mergers and new ventures in the entire communications field so that we (Gannett) can continue aggressive expansion. . . ."[130]

Conclusion

One of the advantages of being a Gannett newspaper is that the paper can draw on the legal and financial resources of the chain when fighting freedom of the press cases. Small and medium-sized newspapers in the chain need not be concerned about bearing the responsibilities of expensive lawsuits alone. In general, Gannett's recent willingness to engage in First

Amendment litigation seems to be good for journalism. But the policy does raise certain issues that need to be addressed.

One result of Gannett's policy is that its newspapers are becoming more willing to initiate litigation. Chapple notes that publishers of the smaller Gannett newspapers are beginning to follow the examples of their bigger brothers.[131] Cases may, therefore, be started just for the sake of making a publisher more visible to corporate headquarters. It is not known how many cases contemplated by Gannett publishers have been aborted because headquarters' lawyers thought the cases were not legally sound or in conformity with positions taken by other papers. And the potential exists that Gannett's increased legal activity may again backfire as it has in Gannett v. DePasquale, further restricting freedom of the press. This is likely to occur, given the nature of the Burger court's record in media cases, if Gannett does not carefully select and manage its cases. Because of the financial resources of chains such as Gannett, it is likely that newspaper chains will be instrumental in establishing press law in the future--press law that will affect all the media and ultimately the public.

Footnotes

[1]The Gannett cases are listed in the Table of Gannett cases, Appendix B. Gannett had nine. Knight-Ridder had 12: Florida ex rel. Miami Herald v. McIntosh, 2 Med.L.Rptr 1328 (Fla.S.Ct. 1977); In re Disclosure of Grand Jury Report (Miami Herald), 2 Med.L.Rptr 1225 (U.S.D.C. S.Fla. 1977); U.S. v. Gurney (Miami Herald), 3 Med.L.Rptr 1081 (C.A.5 1977); Miami Herald v. Marko, 3 Med.L.Rptr 1542 (Fla. S.Ct. 1977); Miami Herald v. Florida, 4 Med.L.Rptr 1681 (Fla. Dist. Ct. App. 1978); Philadelphia Newspapers v. Jerome, 3 Med.L.Rptr 2185 (Pa.S.Ct. 1978), includes 3 lower court cases; (This case has been appealed to the U.S. Supreme Court twice. At first, lower court judgment was vacated, 434 U.S. 241; now it is pending review of petition for certiorari, 47 U.S.L.W. 3111); U.S. v. Cianfrani (Philadelphia Newspapers) 3 Med.L.Rptr 1961 (C.A.3 1978); In Re Grand Jury Investigation (Philadelphia Newspapers) 4 Med.L.Rptr 1713 (C.A.3 1978). Two other Knight-Ridder cases were: English v. McCrary (Tallahassee Democrat) 2 Med.L.Rptr 1903 (Fla.S.Ct. 1977) and Seattle Times v. District Court 4 Med.L.Rptr 1164 and 1433 (C.A.9 1978).

[2]See Table of Gannett Cases, Appendix B.

[3]John Soloski, "The Organizational Nature of News: A Study of a Middle-size Newspaper" (Ph.D., University of Iowa, 1978).

[4]Since the first draft of this paper, the merger of Gannett Co., Inc., with Combined Communications brought the corporation two new papers, and Gannett announced on July 5, 1979, that it would sell its Nashville Banner and buy the Nashville Tennessean. The point is that Gannett's acquisitions are so frequent that these numbers are likely to be dated at the time of presentation of the paper.

[5]For further discussion of the corporate relationship between a newspaper chain and its newspapers, see Soloski, op. cit.

[6]The Rochester Democrat and Chronicle and Times-Union in New York are directly owned by Gannett Co., Inc.

[7]Iowa City Press-Citizen (June 27, 1979) p. 6B. A reorganization of Gannett's top management, following the merger of Gannett with Combined Communications, was announced by Gannett president and chairman Allen H. Neuharth on June 28, 1979. The Operating Committee, which had previously been the only day-to-day policy-setting body, was joined by a newly created Office of the Chief Executive, a five-member body that will "coordinate overall management policy for all present operations and for future growth, internal and external." The Office of the Chief Executive includes the

chief of newspaper operations and the chief news executive as well as Neuharth, chief executive of the Combined Communications subsidiary and the chief financial officer.

[8] Ibid. See also Gannett 1977 Annual Report, p. 24.

[9] Exact payments to individual publishers and other management staff are not known, and which newspaper staff people are compensated through profit-sharing plans is not public information. Some local newspaper bonus plans are holdovers from plans in effect when the newspapers were owned by corporations or individuals other than Gannett. The average payment to 215 executives, besides directors and officers of the corporation and apparently including some publishers and others, under the Executive Incentive Plan for 1977 was $5,034. Payments under this plan are based on "the performance during the year of Gannett, the Gannett operating unit in question (e.g. a newspaper), and the individual employee." In addition to payments under that plan, the publishers of perhaps 77 newspapers received an average of $7,556 in February 1978, from the Long-Term Incentive Compensation Plan. Payments were contingent on "achievement of performance targets. The targets were based primarily on defined annual cumulative growth rates in earnings of a designated operating unit within Gannett" (Emphasis added). That plan is no longer in effect, apparently being replaced by the 1978 Executive Long-Term Incentive Plan, which provides for distribution of cash, stock and/or stock options to about 200 persons. Averages calculated and quotes from "Joint Proxy Statement," Jan. 25, 1979, pp. 36-38. The averages should not be considered as necessarily additive or as accurate representations of actual payments. A source within one Gannett newspaper has said that the publisher of that paper generally receives annual profit-sharing payments about equal to his salary.

[10] Los Angeles Times (Sept. 7, 1978).

[11] Cited in David Shaw, Los Angeles Times (Sept. 7, 1978). The 10 years coincided with Gannett's first 10 years as a publicly held corporation. See other excerpts from the Neuharth comments on the first 10 years at note 123 and text. Gannett has now embarked on a new program, Gannett II (the second 10 years), to improve its journalistic image. Gannett II also provides for making strides in the employment and promotion of women and minorities.

[12] See, for example, undated letter (March 1979), Phil Dessauer, president, Society of Professional Journalists, Sigma Delta Chi, to members; The News Media and the Law (Jan. 1979) p. 29; the American Newspaper Publishers Association's decision to investigate the possibility of establishing "First Amendment insurance" for the benefit of newspapers, as outlined by ANPA president Neuharth in his keynote address, April 23, 1979.

[13]427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976).

[14]Phil Berkebile, general manager of Nebraska Press Association, interview March 9, 1979.

[15]See note 12. SPJ,SDX announced in March 1979 that it has hired an attorney to help members in freedom of information cases. See The Quill 67 (March 1979) p. 13.

[16]Gary C. Seacrest, "The Press v. The Bench," Gannetteer (January 1977) p. 5.

[17]Seacrest is now employed by his family's chain of newspapers headquartered in Lincoln, Neb. His family's North Platte (Neb.) Telegraph was the original plaintiff in Nebraska Press Association v. Stuart. Interview, March 12, 1979.

[18]Robert H. Giles estimation of the cost was based on a figure provided him in the summer of 1978. Interview, March 20, 1979.

[19]Giles, March 20, 1979. Thomas L. Chapple, secretary and assistant general counsel of Gannett Co., Inc., interview, March 23, 1979.

[20]The position was created after the corporate body recognized that many of the legal questions directed to the corporate legal counsel were First Amendment questions. (Chapple, March 23, 1979.) The start of Gannett's aggressive legal action, particularly in courtroom and court-record access cases coincides with the hiring of the first First Amendment lawyer.

[21]Alice Neff Lucan, interview, March 15, 1979.

[22]Seacrest, March 13, 1979.

[23]See Neuharth statement at note 33. In the same issue of Editor and Publisher, in which a new Gannett ad campaign on freedom and the press is reported and one of the ads appears, Neuharth is reported as saying Gannett has no corporate First Amendment policy. See Editor and Publisher (June 23, 1979) cover, pp. 12, 14, 20 and 21. We have concluded that Gannett's actions provide evidence of the existence of a corporate First Amendment policy.

[24]Seacrest, March 13, 1979.

[25]Giles, March 20, 1979.

[26]Allen H. Neuharth, "Future Directions in American Newspapers: The Dangers of an Imperial Judiciary," speech delivered to the SPJ,SDX convention, Birmingham, Ala., Nov. 16, 1978.

[27]Chapple, March 23, 1979.

[28]Neuharth, ANPA speech. See New York Times (April 24, 1979) p. D14, including a picture of the large, original version of the scroll. See also Editor and Publisher (April 28, 1979) cover and pp. 11 and 12. The cover incorporates the ANPA scroll and excerpts from Neuharth's speech into a Gannett ad.

[29]Neuharth, ANPA speech.

[30]See Wall Street Journal (May 3, 1979) p. 40, and Neuharth, ANPA speech. See also note 28.

[31]Editor and Publisher (June 23, 1979) p. 12.

[32]Iowa City Press-Citizen (a Gannett paper) (June 28, 1979) p. 6B; (July 2, 1979) p. 7B. See also Time (July 2, 1979) pp. 39-40; Editor and Publisher (June 23, 1979) pp. 20-21; Wall Street Journal (June 25, 1979), p. 9. (All ads are the same as Figures I and II.)

[33]Editor and Publisher (June 23, 1979), p. 14. Neuharth was the guest speaker at a June 12, 1979, National News Council meeting marking the end of a year-long study of concentration of media ownership. It was announced at the meeting that the Gannett Foundation had for the fourth year in a row contributed a "substantial amount" to the National News Council.

[34]See Harold L. Nelson and Dwight L. Teeter, Jr., Law of Mass Communications, 3rd ed. (New York: 1978), pp. 301, 434.

[35]Since the argument of the paper focuses on the constitutional questions, a description of the statutory cases appears in Appendix A.

[36]427 U.S. 539, 96 S.Ct. 2791, 49 L.Ed.2d 6838 (1976).

[37]73 N.J. 132, 373 A.2d 377 (N.J.S.C. 1977).

[38]43 N.Y.2d 370, 401 N.Y.S.2d 756, 372 N.E.2d 544 (N.Y.C.A. 1977). Cert granted, 435 U.S. 1006, 98 S.Ct. 1875, 56 L.Ed.2d 387 (1978). Oral

arguments, 11/7/78, 47 U.S.L.W. 3325. See Gannett brief.

[39]See, for example, "Secret Courts/Open Court" sections of The News Media and Law; Richard M. Schmidt, Jr. and Ian D. Volner, "Nebraska Press Association: Open or Shut Decision?" Stanford Law Review, 29: 516-37.

[40]2 Med.L.Rptr 1737 at 1738. That criminal case was New Jersey v. Hughes and Thompson.

[41]2 Med.L.Rptr 1741.

[42]2 Med.L.Rptr 1741.

[43]Ibid., citing Sheppard v. Maxwell 384 U.S. 333, 16 L.Ed.2d 600 (1966); 384 U.S. at 357-362 and Nebraska Press Association 49 L.Ed.2d 683 at 700.

[44]54 A.D.2d 614, 387 N.Y.S.2d 336 (N.Y.App.Div. 1976).

[45]2 Med.L.Rptr 1189 at 1190.

[46]2 Med.L.Rptr 1190.

[47]A 1970 study reported that 96.4 percent of American judges polled believed release of a confession was an obstacle to a fair trial, for example. See reference in: Dan Rottenberg, "Do news reports bias juries?" Columbia Journalism Review (1977) p. 16. Many press/bar guidelines contain provisions for not reporting confessions.

[48]See The News Media and the Law (April 1978) p. 6.

[49]2 Med.L.Rptr 1215 at 1216.

[50]2 Med.L.Rptr 1217, citing 49 L.Ed.2d 700.

[51]3 Med.L.Rptr 1529 at 1530.

[52]3 Med.L.Rptr 1531.

[53]3 Med.L.Rptr 1532.

[54]3 Med.L.Rptr 1530-1.

[55]3 Med.L.Rptr 1531.

[56]3 Med.L.Rptr 1532. The court said: "Continuance, extensive voir dire examinations, limiting instructions or venue changes may prove paltry protection for precious rights."

[57]3 Med.L.Rptr 1532 citing Nebraska Press Association v. Stuart, 427 U.S. 539 at 584 n. 11 (Brennan, J., concurring opinion).

[58]3 Med.L.Rptr 1533.

[59]3 Med.L.Rptr 1533, 1532.

[60]3 Med.L.Rptr 1534.

[61]See report of arguments before U.S. Supreme Court, 47 U.S.L.W. 3325 and Paul Levine, "Legally Speaking," Editor and Publisher (Dec. 2, 1978) p. 7; Gannett brief.

[62]Seacrest, March 13, 1979.

[63]Chapple, March 23, 1979.

[64]The description of the Supreme Court decision is based on the substantial but not nearly complete excerpts from the opinions published in the New York Times (July 3, 1979) p. 8A. (The full opinions will have been read before presentation of the paper, and if this footnote continues as part of the paper, it has been concluded that no revision was necessary.)

[65]See Des Moines Register editorial (July 6, 1979) p. 6A; Anthony Lewis column, New York Times, reprinted in Des Moines Register (July 6, 1979) p. 6A; comments of several journalism organizations' Freedom of Information Committee heads, New York Times (July 3, 1979) p. 8A; comments of the American Civil Liberties Union staff counsel, Jack Landau of the Reporters Committee for Freedom of the Press and Gannett's Neuharth, Iowa City Press-Citizen (July 3, 1979) p. 8A.

[66]It is not clear whether Powell was referring to the claimed First Amendment right to gather the news.

[67]551 F.2d 916 (C.A.2 1977).

[68]Seacrest, "A Fight for Freedom," Gannetteer (January 1977) p. 5.

[69]2Med.L.Rptr 1224-5.

[70]Seacrest, Gannetteer and 2 Med.L.Rptr 1551 (rehearing denied as case found moot).

[71]No. 1978 (N.Y.App.Div. 1978). Unpublished slip decision.

[72]Information on the case from The News Media and the Law 2 (October 1978) pp. 14-15.

[73]No. 1978. The court actually dismissed the case as moot. It said, however, if it were not moot it would have dismissed the case, finding the judge's action proper under Gannett v. DePasquale.

[74]The News Media and the Law, 2 (October 1978) p. 15; Lucan interview.

[75]Med.L.Rptr 2256 (N.Y.App.Div. 1979).

[76]4 Med.L.Rptr 2257.

[77]345 So.2d 865.

[78]345 So.2d 867.

[79]580 P.2d 49 (Haw.S.Ct. 1978).

[80]4 Med.L.Rptr 1423 at 1425.

[81]4 Med.L.Rptr 1425.

[82]580 p.2d 58 (Haw.S.Ct. 1978).

[83]3 Med.L.Rptr 2575 at 2576. It is not known whether the criticism referred to is criticism of Richardson's handling of this case or the controversy surrounding Honolulu Advertiser v. Takao.

[84]In both cases, three of the five members of the court, including Chief Justice William Richardson, were replaced by circuit court judges because of disqualification or recusation. It is not known whether Judge Richardson and Chief Justice Richardson are related.

[85]3 Med.L.Rptr 2577-8.

[86]3 Med.L.Rptr 2580.

[87]Ibid. The only alternatives cited by the court were voir dire examination, admonitions to the jury and continuance. This portion of the decision cites neither Nebraska Press Association v. Stuart or Sheppard v. Maxwell.

[88]3 Med.L.Rptr 2580-1.

[89]4 Med.L.Rptr 1424.

[90]4 Med.L.Rptr 1425.

[91]Seacrest, asked whether Gannett was looking for a case to take to the U.S. Supreme Court, said, "No." However, in answer to another question, he said, "We knew the issue was open. The Supreme Court hadn't resolved the issue. We knew the possibility was there that we might take one eventually to the Supreme Court on that issue." Seacrest, March 13, 1979.

[92]Libel, New York Times v. Sullivan, Time v. Firestone; privacy, Time v. Hill; contempt, U.S. v. Caldwell (New York Times); prior restraint, New York Times v. U.S. and U.S. v. Washington Post; antitrust law violation, Associated Press v. U.S.

[93]Many of the issues in those cases, however, were addressed in Gannett v. DePasquale, which was already before the Supreme Court.

[94]See articles by Donald Pember, Harold L. Nelson, and Donald Gillmor in The ASNE Bulletin (December 1978) pp. 6-9.

[95]Nelson, p. 7.

[96]Gillmor, p. 9.

[97]In Re Farber, 4 Med.L.Rptr 1360 (N.J.S.Ct. 1978). Gannett was one of the organizations that filed an amicus brief.

[98]According to David Shaw of the Los Angeles Times, about eight to ten are being issued weekly. See Shaw, "Journalists Fear Impact of Court Rulings," APME News (March 1979) p. 3.

[99]Ibid., pp. 9-10. Shaw cites Ben Bagdikian and an attorney for the Detroit Free Press as examples.

[100]New York Times v. New Jersey, 78-540, cert. 47 U.S.L.W. 3369, 3 Med.L.Rptr 2465 (1978). In Branzburg v. Hayes 408 U.S. 66 (1972) the Supreme Court had found no constitutional reporters' privilege.

[101]See Westchester Rockland Newspapers v. Leggett and Westchester Rockland Newspapers v. Marbach discussed above and The News Media and the Law (April 1978) p. 8; (July 1978) pp. 17-18; (October 1978) pp. 14-15.

[102]The News Media and the Law (October 1978) pp. 14-15.

[103]Buffalo Courier-Express v. Stiller 404 N.Y.S.2d 470 (N.Y.App.Div. 1978) on exclusion of press from pretrial hearing on admissibility of line-up identification of defendant; Hearst v. Vogt 406 N.Y.S.2d 567 (N.Y.App.Div. 1978) on use of photos of police leaving and entering brothels; Westchester Rockland Newspapers v. Leggett No. 1978 (N.Y.App.Div. 1978) unreported slip opinion, on competency hearing; In re Merola 5 Med.L.Rptr 1033 (N.Y.App.Div. 1979) on the exclusion of the press from pretrial hearing on admissibility of confession by 13-year-old defendant, the first person so young tried under a new New York statute permitting the trial of young juveniles as adults for certain violent crimes; Westchester Rockland Newspapers v. Marbach 4 Med.L.Rptr 2256 (N.Y.App.Div. 1979) on a discovery hearing.

[104]Lucan, March 15, 1979; Giles, March 20, 1979.

[105]Giles, March 20, 1979.

[106]See American Civil Liberties Union and Reporters Committee for Freedom of the Press briefs in Gannett v. DePasquale; The News Media and the Law (October 1978) p. 10; ACLU and Landau comments at note 65.

[107]The News Media and the Law (October 1978) p. 10. Neuharth uses this 90 percent figure, too, and it is not known where it orginated. See Neuharth, ANPA speech; and verbatim repeat in his reaction to the decision, Iowa City Press-Citizen, July 3, 1979, p. 8A. He said, "Ninety percent of criminal indictments are settled in pre-trial hearings. Therefore, this secrecy ruling could mean the people would get only a 10 percent peek at how the judges handle the public business."

[108]See discussion at note 65.

[109]Giles, March 20, 1979.

[110]Giles, March 20, 1979.

[111]Lucan, March 15, 1979.

[112]Editor and Publisher (Dec. 23, 1978) p. 7.

[113]Ibid.

[114]Quill (February 1979) p. 6.

[115]Publisher's Auxiliary (June 4, 1979) pp. 1, 3.

[116]Editor and Publisher (June 23, 1979) p. 14.

[117]Los Angeles Times (Sept. 7, 1978). See also Neuharth, "A Partnership in Progress: Opportunity for All. . ." (mimeo, report to Gannett executives, Dec. 13, 1978 on a portion of Gannett II).

[118]Editor and Publisher (Dec. 16, 1978) p. 12, and Neuharth, mimeo Dec. 13, 1978.

[119]Editor and Publisher (Dec. 16, 1978) p. 12.

[120]Gannett will continue to have an AM-radio and daily newspaper cross-ownership in Marietta, Ohio.

[121]Seacrest, March 12, 1979.

[122]Gannett 1977 Annual Report, pp. 4-23. See also Rochester, N.Y. Times-Union, (April 27, 1979) p. 3B, on the Scripps award for the DePasquale case.

[123]Los Angeles Times (Sept. 7, 1978).

[124]Ibid.

[125]Editor and Publisher (Feb. 3, 1979) p. 7. Loren Ghiglione, editor and publisher of the Southbridge (Mass.) Evening News, writes: "In pursuit of their goal, the groups aren't stupid. They know that a substantial quantity of news, a stylish (if somewhat standardized) format, a modern plant, efficient management and a 'hands-off' editorial policy are good business. The next independent publisher to be cajoled into selling will be more likely to part with his paper if he can tell his hometown buddies (and his conscience) that he sold to professionals." Loren Ghiglione, "Does more mean merrier?," The Bulletin (October 1977) p. 3.

[126]David Halberstam, "The California Dynasty: Otis Chandler and His Publishing Empire," The Atlantic (April 1979) p. 77.

[127]Charles B. Seib, Des Moines Register (July 14, 1979) p. 6A.

[128]Ibid.

[129]Los Angeles Times (Sept. 7, 1978).

[130]Iowa City Press-Citizen (June 27, 1979) p. 6B.

[131]Chapple, March 23, 1979.

Appendix A

Statutory Access

While pressing for an interpretation of the First Amendment that would protect a right of newsgathering and require the trial process to be open from start to finish, Gannett and its subsidiaries have simultaneously initiated at least seven cases under state open-record or open-meeting statutes to clarify and/or expand the legal right of the news media to cover the legislative and administrative branches of government.[1] In all but one case, the Gannett newspapers appealed administrative and lower court decisions until they were allowed by court order to have the information or attend the meetings they desired.

The open records cases were initiated by Gannett newspapers in New York, Florida and Hawaii. They have involved classes of records--personnel files, information pertaining to the acquisition of property, investigative files, and police records--commonly exempted from disclosure in other states' open records or open meeting laws.[2] But Gannett's newspapers were successful in getting access to the specific information it wanted in each case.

Gannett v. Goldtrap[3]

The Fort Myers News-Press in Florida asked for an appraisal report prepared for negotiations on the acquisition of a site for a county landfill. After two appeals, the newspaper was permitted to see the appraisal as a result of an October 1974 ruling by a District Court of Appeal. In

oral argument, Gannett had conceded that disclosure of the appraisal during negotiations would be harmful to the county but argued that the result was irrelevant to the interpretation of the state public records law.[4] The court reluctantly agreed.

News-Press Publishing v. Wisher[5]

Within a year of the Goldtrap decision, the News-Press was back in court seeking access to county personnel records that would identify a county department head who had been formally warned by county commissioners that he might be fired. After three appeals, one by the county, the newspaper was granted access in February 1977 by the Florida Supreme Court to the individual's name and contents of the letter of warning.[6] One lower court had granted the News-Press access to all county personnel files; another ruled that all personnel files were closed.[7] The Florida Supreme Court decided the case without settling the question of whether personnel files were generally open public records.[8]

Westchester Rockland Newspapers v. Mosczydlowski[9]

In 1976, the Yonkers Herald-Statesman, one of nine Gannett Westchester Rockland newspapers, sought access to a report on an internal police department investigation of the suicide of an inmate in the Yonkers City Jail. After two appeals, the Appellate Division in July 1[illegible] granted the newspaper access to the report by finding a gap between exemptions from disclosure for some police records and material prepared for litigation.[10] The court ordered a lower court to review the report in camera to delete names of police and jail personnel from the report.

Gannett v. Monroe County[11]

The Rochester newspapers in early 1977 had asked county officials to provide the names, titles and salaries of 276 county employees who had been laid off due to financial difficulties and resulting budget cuts. One court denied access to the personnel records, and in November 1977 the Appellate Division ordered the county to provide the information the newspapers requested. The court, like the Florida court, did not grant general access to the personnel records.

Gannett Pacific v. Hawaii[12]

In a case brought by Gannett's Honolulu Star-Bulletin, a Hawaii circuit court ruled in 1975 that a 1974 state statute that closed all police records except those pertaining to convictions was unconstitutional.[13] The court found that the statute violated the First Amendment by restricting the media's ability to gather as well as disseminate news. The law was changed in 1975.[14]

Gannett newspapers in Illinois and Delaware attempted to have closed meetings declared violations of state open-meetings statutes. One effort was successful, the other was not.

Rockford Newspapers v. Northern Illinois Council on Alcoholism and Drug Dependence[15]

The Rockford newspapers in 1976 went to court to gain access to a meeting of a private, nonprofit alcohol and drug abuse agency under the state's open meeting statute. In two appeals, the newspaper had argued

that the agency should be considered a "subsidiary" government body covered by the law because 90 percent of its funds came from government grants and contracts. In September 1978 an Illinois Appellate Court denied the request. If the newspaper's argument were accepted, the court said, meetings held by a private construction firm that did only public highway construction would have to be open. That would be unwarranted intrusion into private business, the court said.

News-Journal v. McLaughlin[16]

Shortly after it went into effect, the Delaware open-meeting statute was tested by the Wilmington newspaper in 1977. The News-Journal won a November 1977 ruling from a lower court that an informal meeting of the 11 Democratic members of the 13-member Wilmington city council and Democratic city officials had been a meeting of a public body that should have been open under the law.

Notes for Appendix A

[1]These are the reported decisions. Gannett newspapers have apparently initiated others resolved without written opinions.

[2]John B. Adams, "State Open Meetings Law: an Overview," Freedom of Information Foundation Series No. 3, July 1974, and William Randolph Henrick, "Public Inspection of State and Municipal Executive Documents," 45 Fordham Law Review 1105 (1977).

[3]302 So.2d 174 (Fla.App. 1974).

[4]302 So.2d 174.

[5]345 So.2d 646 (Fla.S.Ct. 1977); 310 So.2d 345 (Fla.App. 1975).

[6]345 So.2d. 648.

[7]310 So.2d 349.

[8]345 So.2d 648.

[9]58 A.D.2d 234, 396 N.Y.S.2d 857 (N.Y.App.Div. 1977); 88 Misc.2d 348 (N.Y.S.Ct. 1976).

[10]58 A.D.2d 237 at 238.

[11]59 A.D.2d 309, 399 N.Y.S.2d 534 (N.Y.App.Div. 1977); 90 Misc.2d 76, 393 N.Y.S.2d 676 (N.Y.S.Ct. 1977).

[12]Unreported decision by the circuit court, discussed in Gillmor, op. cit., p. 8.

[13]7 Sess.LawsHaw. 45 (1974).

[14]8 Sess.LawsHaw. 120 (1975).

[15]4 Med.L.Rptr 2006 (Ill.App. 1978).

[16]2 Med.L.Rptr 2317 (Del.Ct.Chanc. 1977).

Appendix B

Table of Gannett Cases

Courtroom and Court-Record Access Cases

1. New Jersey v. Allen 73 N.J. 132, 373 A.2d 377 (N.J.S.Ct. 1977).

2. Gannett Co. v. Mark 54 A.D.2d 818, 387 N.Y.S.2d 336 (N.Y.App.Div. 1976).

3. Gannett Co. v. DePasquale 55 A.D.2d 107, 389 N.Y.S.2d 719 (N.Y.App.Div. 1976).

   Gannett Co. v. DePasquale 43 N.Y.2d 370, 401 N.Y.S.2d 756 (N.Y.C.A. 1977).

   Gannett Co. v. DePasquale 435 U.S. 1006, 98 S.Ct. 1875, 56 L.Ed.2d 387 (cert. granted, 1978). Oral arguments, 11/7/78 47 U.S.L.W. 3325.

4. Gannett Co. v. Burke 551 F.2d 916 (C.A. 2 1977).

5. News-Press Publishing Co. v. Florida 345 So.2d 865 (Fla.App. 1977).

6. Gannett Pacific v. Richardson 580 P.2d 49 (Haw.S.Ct. 1978).

7. Honolulu Advertiser v. Takao 580 P.2d 58 (Haw S.Ct. 1978).

8. Westchester Rockland Newspapers v. Leggett No. 1978 (N.Y.App.Div. 1978).

   Unreported slip decision.

9. Westchester Rockland Newspapers v. Marbach 4 Med.L.Rptr (N.Y.App.Div. 1979).

Statutory Access Cases: Open Meeting and Open Records

1. Gannett Co. v. Goldtrap 302 So.2d 174 (Fla.App. 1974).

2. Gannett Pacific v. Hawaii (Haw. Cir.Ct. 1975) Unreported decision.

3. Wisher v. News-Press Publishing Co. 310 So.2d 345 (Fla.App. 1975).

   News-Press Publishing Co. v. Wisher 345 So.2d 646 (Fla.S.Ct. 1977).

4. Rockford Newspapers v. Northern Illinois Council on Alcohol and Drug Dependence 4 Med.L.Rptr 2006 (Ill. App. 1978).

5. News-Journal v. McLaughlin 2 Med.L.Rptr (Del.Ct.Chanc. 1977).

6. Gannett Co. v. Monroe County 90 Misc. 76, 393 N.Y.S.2d 676 (N.Y.S.Ct. 1977).

   Gannett Co. v. Monroe County 59 A.D.2d 309, 399 N.Y.S.2d 534 (N.Y.App.Div. 1977).

7. Westchester Rockland Newspapers v. Mosczydlowski 88 Misc.2d 348 (N.Y.S.Ct. 1976).

   Westchester Rockland Newspapers v. Mosczydlowski 58 A.D.2d 234, 396 N.Y.S.2d 857 (N.Y.App.Div. 1977).